

**UNITED STATES DISTRICT COURT  
MIDDLE DISTRICT OF TENNESSEE  
NASHVILLE DIVISION**

**ROBERT E. COLE,**

**Plaintiff,**

**v.**

**STATE OF TENNESSEE, *et al.*,**

**Defendants.**

)  
)  
)  
)  
)  
)  
)  
)  
)  
)

**No. 3:12-cv-0332**

**Judge Sharp**

**Magistrate Judge Bryant**

**ORDER**

Plaintiff Robert Cole, a prisoner proceeding *pro se*, filed a Complaint on April 2, 2012, against multiple defendants, including Dane Lee, M.D., wherein he asserted numerous constitutional and statutory claims for purported violations of his constitutional rights. *See* (Docket Entry No. 1, Complaint).

Pending before the Court is *Dane Lee, M.D.'s Motion to Dismiss for Failure to State a Claim* (Docket Entry No. 33). Plaintiff filed a response in opposition to the motion. (Docket Entry No. 47). Defendant Lee claimed that “Cole’s allegations against [him were] formed in one paragraph that lacks any factual allegations. The allegations against [him] are nothing more than the insufficient the-Defendant-unlawfully-harmed-me allegations.” (*Id.* at 1).

Magistrate Judge Bryant entered a Report and Recommendation (“R & R”) (Docket Entry No. 72) in this case on March 6, 2013, concluding however, “Exhibit D of plaintiff’s prolix complaint does contain [] factual allegations... that [are] sufficient to state a plausible claim for deliberate indifference to serious medical needs under § 1983.” (*Id.* at 5). Therefore, recommending, “[w]ith respect to that claim, defendant Lee’s motion to dismiss must be denied. With respect to all other claims against defendant Lee, defendant’s motion to dismiss has merit

and should be granted.” (*Id.* at 7). Defendant Lee filed a timely objection to the R & R on March 12, 2013. (Docket Entry No. 79). Among other arguments, Defendant Lee argues “[t]he allegations against Lee – when considered in light of the record – show the allegations are either not true or they don’t support an Eighth Amendment claim.” *See (Id.* at 10).

The Federal Rules of Civil Procedure require Plaintiff to provide “a short and plain statement of the claim showing that the pleader is entitled to relief.” Fed R. Civ. P. 8(a)(2). In deciding a motion to dismiss under Rule 12(b)(6), the court will “construe the complaint in the light most favorable to the plaintiff, accept its allegations as true, and draw all reasonable inferences in favor of the plaintiff.” *Directv, Inc. v. Treesh*, 487 F.3d 471, 476 (6th Cir. 2007); *Inge v. Rock Fin. Corp.*, 281 F.3d 613, 619 (6th Cir. 2002). The court must assume that all of the factual allegations are true, even if they are doubtful in fact. *Bell Atlantic Corp. v. Twombly*, 550 U.S. 544, 555 (2007). Having considered the matter *de novo* in accordance with Fed. R. Civ. P. 72(b), the Court agrees with the Magistrate Judge’s recommended disposition.


Accordingly, the Court hereby rules as follows:

(1) The Report and Recommendation (Docket Entry No. 72) is hereby ACCEPTED and APPROVED; and

(2) *Dane Lee, M.D.’s Motion to Dismiss for Failure to State a Claim* (Docket Entry No. 33) is hereby GRANTED in part and DENIED in part. The motion should be denied with respect to Plaintiff’s Section 1983 claim of deliberate indifference to his serious medical needs. The motion should be granted with respect to all other claims.

This action is hereby returned to the Magistrate Judge for further pretrial management in accordance with Local Rule 16.01.

**It is SO ORDERED.**



---

KEVIN H. SHARP  
UNITED STATES DISTRICT JUDGE